IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6651 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJ STATE ROAD TRANSPORT CORPN - Petitioner(s)
Versus
KASHIBHAI BHIKHABHAI SOLANKI & 1 - Respondent(s)

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Appearance :
MR MITUL K SHELAT for Petitioner.
MR SANDIP C SHAH for Respondent(s) : 1,
MR GK RATHOD for Respondent(s) : 1,
MR LB DABHI, AGP for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 14/11/2005

ORAL JUDGMENT

1.The petitioner – Gujarat State Road Transport Corporation has filed this petition under Article 227 of the Constitution of India praying for quashing and setting aside the order dated 24.10.1986 passed by the second respondent in I.D. Case No. 32/86 and to direct the second respondent to grant approval as sought for by the petitioner – Corporation.

2.The petition was admitted by this Court on 29.12.1986 and it was ordered to be heard along with Special Civil Application Nos. 6594 & 6597 of 1986. Special Civil Application No. 6594 of 1986 was disposed of by this Court vide order dated 30.01.1990. The order was passed by consent and the Court has recorded in the order that the parties have amicably settled the dispute. Mr. Shelat on instruction from the petitioner Corporation stated in that petition

that the respondent No. 1 workman will be reinstated as Conductor with continuity of service but without back wages or other financial benefits arising therefrom and his one annual increment will be withheld for one year with future effect. The aforesaid punishment to be meted out to respondent No. 1 was acceptable to him. The Court has, therefore, allowed the said petition to the above extent.

3.Special Civil Application No. 6597 of 1986 was disposed of on 24.12.1986 wherein it was observed that no error apparent on the face of the record committed by the Labour Court was pointed out to the Court which called for Court's interference in exercise of power under Article 227 of the Constitution. The petition was, therefore, dismissed by the Court.

4.Mr. Mitul K. Shelat, learned advocate appearing

for the petitioner – Corporation has relied on the judgment in the case of G.S.R.T.C. V/s. Jarnalsingh D. Ramgadhia, 1996 (2) G.L.H. 920 wherein the Court has taken the view that where the Conciliation Officer earlier held that there was a deficiency of 52 paise, the management was fully justified in accepting the error and correcting it and then issuing another order of dismissal and then applying for approval. The Conciliation Officer is wholly in error in emphasising that after the workman resumed his duty on 26.08.1994, there has not been any departmental proceedings against him. The management is fully within its rights to pass the second order on the same set of facts and to contend that whether its inquiry was fair or proper be gone into and thereafter the approval may be either granted or rejected.

5.Mr. G.K. Rathod, learned advocate appearing for

respondent No. 1 has submitted that after the respondent No. 1 was dismissed from service, the respondent No. 1 has filed Reference being (L.C.V.) No. 1104 of 2004 before the Labour Court, Vadodara which is still pending and the respondent No. 1 is still not reinstated.

6.The order rejecting the approval was passed by the Conciliation Officer on 24.10.1986. More than 19 years have passed. There is no justifiable reason to remand the matter after somany years. The Court has adopted the formula in Special Civil Application No. 6594 of 1986. As per the said formula, if the respondent No. 1 is allowed to be reinstated, he will not press for back wages. The very fact that for the last 19 years, the respondent No. 1 was not reinstated, there is no question of inflicting any more punishment on the respondent No. 1 workman. Even otherwise, the only misconduct said to have been committed by

the respondent No. 1 workman is that he has not issued the ticket of 50 paise to the passenger. For such a small misconduct to dismiss the respondent No. 1 – workman from service is disproportionate to the misconduct committed by him. Taking overall view of the matter and considering the entire facts and circumstances of the case, the Court is of the view that if the respondent No. 1 workman is reinstated, without any back wages, however with continuity of service provided the respondent No. 1 has not reached to the age of superannuation, the ends of justice would be met.

7.Accordingly, the petitioner – Corporation is hereby directed to reinstate the respondent No. 1 – workman within four weeks from today with continuity of service and without any back wages, if the respondent has not reached the age of superannuation. In view of this direction, Mr. G.K. Rathod, learned advocate

appearing for the respondent No. 1 has submitted that respondent No. 1 will not press his reference which is pending before the Labour Court, Vadodara. This petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

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